

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS E. SHIELDS and U.S. POSTAL SERVICE,
POST OFFICE, West Sacramento, Calif.

*Docket No. 97-650; Submitted on the Record;
Issued October 22, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

The Board has duly reviewed the case record in the present appeal and finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

The only decision before the Board on this appeal is the Office's August 28, 1996 decision denying appellant's application for a review on the merits of its August 17, 1995 decision.¹ Because more than one year has elapsed between the issuance of the Office's August 17, 1995 merit decision and November 26, 1996, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the August 17, 1995 decision.²

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,³ the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.⁴ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his application for review

¹ By decision dated August 17, 1995, the Office found that appellant's work-related disability ceased on June 16, 1994 and that the condition has resolved, as there was no objective evidence of a groin strain.

² See 20 C.F.R. § 501.3(d)(2).

³ 5 U.S.C. § 8101-8193.

⁴ 20 C.F.R §§ 10.138(b)(1), 10.138(b)(2).

within one year of the date of that decision.⁵ When a claimant fails to meet one of the above-mentioned standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.⁶ Evidence that repeats or duplicates evidence already in the case record has no new evidentiary value and does not constitute a basis for reopening a case.⁷ Evidence that does not address the particular issue involved also constitutes no basis for reopening a case.⁸ However, a request for reconsideration submitted within one year of the date of the decision accompanied by new and relevant medical evidence not duplicative of evidence of record and not previously considered does constitute a basis for reopening the case for further review on its merits.

In support of her request appellant submitted several new, relevant medical reports. A June 7, 1995 report from Dr. Neal J. Baumach stated that appellant was seen for left groin pain in August 1994, and that the etiology of the pain was secondary to appellant's work activities and driving his mail car, and that the symptoms might continue for 18 to 36 months. An April 25, 1996 report from Dr. Jeffrey C. Reinking contained a diagnosis of continuing chronic groin strain, the accepted employment-related condition, and left obturator nerve entrapment, noted symptoms continuing after July 1994, discussed the accepted injury as a form of repetitive strain injury dependent on anatomical positioning and activity, and discussed treatment approaches. A May 15, 1996 report from Dr. Mark S. Agness critiqued the medical rationale behind the Office's August 17, 1995 denial as being rather bizarre, opined that appellant had ongoing groin problems which were work related, and observed that appellant's ongoing symptoms were aggravated by his work activities and by driving. The Board finds that these reports are all relevant, that they all address appellant's condition on and after the various dates the Office found that his symptoms had ceased, contain relevant diagnoses, and discussed causal relation with employment factors, and hence, all constitute pertinent new evidence not previously considered, such that review of the evidence and the case on its merits is warranted.

The Board finds that the Office abused its discretion in its August 28, 1996 decision by denying appellant's request for a review on the merits of its August 17, 1995 decision under section 8128(a) of the Act. Appellant advanced a point of law or a fact not previously considered by the Office and submitted relevant and pertinent evidence not previously considered by the Office.

⁵ 20 C.F.R. § 10.138(b)(2).

⁶ *Joseph W. Baxter*, 36 ECAB 228 (1984).

⁷ *Mary G. Allen*, 40 ECAB 190 (1988); *Eugene F. Butler*, 36 ECAB 393 (1984).

⁸ *Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

Consequently, the decision of the Office of Workers' Compensation Programs dated August 28, 1996 is hereby set aside and the case is remanded for further consideration on its merits.

Dated, Washington, D.C.
October 22, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member